

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York,	: Case No.: 14 Civ. 2863 (CM)
	:
Plaintiff,	: <b>AFFIDAVIT OF TODD</b>
	: <b>BARON</b>
-against-	:
	:
CONDOR CAPITAL CORPORATION and STEPHEN BARON,	:
	:
Defendants.	:
	:
-and-	:
	:
WELLS FARGO BANK, N.A., as Agent for Certain Financial Institutions as Lenders,	:
	:
Intervenor.	:
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STATE OF NEW YORK     )  
                                  )     ss.:  
COUNTY OF SUFFOLK    )

TODD BARON, being duly sworn, deposes and says:

1. I am the Executive Vice President of Condor Capital Corporation (“Condor”), a defendant in the above-captioned lawsuit. I make this affidavit in support of the Defendants’ motion to amend the Preliminary Injunction Order, dated May 13, 2014 (the “Order”). I am fully familiar with the facts set forth herein.

2. Condor is a New York-based sales finance company that specializes in financing sub-prime automobile loans. Condor was founded in 1994 and became licensed by the New York State Banking Department as a sales finance company in the State of New York in 1996.

**Condor Customers**

3. Condor works with automobile dealers in approximately thirty different states to provide financing for “subprime” or “non-prime” customers who cannot obtain automobile loans with prime lenders. Because Condor’s customers generally lack the ability to acquire financing

through traditional, prime, lenders, Condor views itself as providing an invaluable service to a large population of people who would otherwise not be able to own an automobile – a necessity in many parts of the country.

4. By my calculations, which were conducted using the same data available to the Department of Financial Services representatives who are in Condor's offices, the money owed back to the customers due to overpayment is approximately \$1.05 million for the time period from January 1, 1996 to December 31, 2011. To put that amount in perspective, the total amount of money loaned by Condor since 1996 is approximately \$1.6 billion. The average amount Condor owes is \$68.55. Between December 2013 through May 23, 2014, Condor has paid a total of \$296,809 to customers to refund positive credit balances.

#### **Condor's Banking Institutions**

5. Condor uses the proceeds of a credit facility ("Credit Facility") provided by Wells Fargo, NA and Bank of Montreal ("Lenders"), pursuant to that certain Amended and Restated Loan & security Agreement dated October 12, 2006 (as amended, the "Loan Agreement") to fund the loans Condor makes to its customers. The interest Condor was paying on the Credit Facility on April 22, 2014 was 2.752%. However, because the Lenders have delivered notices of events of default under the Loan Agreement, the Lenders are now charging a default interest rate of 5.252%. The Lenders have also demanded Condor pay their legal fees, in the amount of \$397,000, from April 23, 2014 to the present.

6. Due to the actions taken by DFS, the chaos wrought by the freezing of Condor's accounts, the Lenders have advised the Receiver that they wish to terminate the Credit Facility.

7. According to Citibank, the banking institution with which Condor has had a 20-year relationship, this proceeding -- including the restrictions imposed by the April 23, 2014

Temporary Restraining Order (“TRO”), and the Order -- have put an unbearable strain Citibank’s resources. Citibank has asked Condor to terminate its banking relationship with Citibank, when Condor is able to do so.

**Condor Employees**

8. Since the entry of the TRO, Condor has lost 65 employees; 43 employees were laid off as a direct consequence of to the shut-down of Condor’s loan origination function. Other employees have quit because of the delays in payroll, or because of the perceived-inimical presence of the DFS workers in our offices. Condor has lost valuable employees, some of whom had been with the business for as long as 18 years. I am attaching as Exhibit 1, a copy of a letter sent to my father, Stephen Baron, by one of the wife of John Grella, our Collections Manager. I think that this letter captures the importance many of our employees attach to Condor.

**Condor Compliance**


9. Before the TRO was issued, Condor did have a compliance program. It trained employees who handle direct calls with consumers in collections, and issued a manual to guide these employees. The Condor Call Handler Manual is attached hereto as Exhibit 2. Condor similarly had in place a Credit Policy and Fair Lending Plan, guiding employees in the loan origination side of the business. The Condor Credit Policy is attached hereto as Exhibit 3; the Condor Fair Lending Plan is attached hereto as Exhibit 4. After the TRO was issued, Condor instituted the Clean Desk Policy Memo, which is attached hereto as Exhibit 5.

10. Moreover, at my request, Condor sent our employee, Patricia Yasparo to the National Automotive Finance Association Consumer Credit Compliance Executive Certification Program. Attached here to as Exhibit 6 is a true and correct copy of the description of that program.

11. I also researched and made contact with Fidelity Information Services, LLC (“FIS”). FIS is a publicly traded company that describes itself as “the world’s largest global provider dedicated to banking and payments technologies . . . [w]ith a long history deeply rooted in the financial services sector, FIS serves more than 14,000 institutions in over 100 countries.” (<http://www.fisglobal.com/aboutfis>.) FIS has agreed to provide a thorough compliance risk assessment, systems review, and compliance training to Condor employees, and the Denis O’Connor, in his capacity as Receiver for Condor, signed a comprehensive contract with FIS on May 30, 2014.

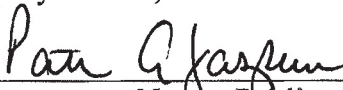
12. Finally, I note that DFS did not issue an audit report after its examination of Condor in November 2013, nor did it issue an audit report after its January 2014 examination. Since their arrival at our offices following the TRO, DFS has not cited to me a single deficiency in Condor’s compliance policies and procedures, despite my many requests. In fact, one DFS employee who monitored Condor’s calls with customers, told me that he had found not deficiencies in Condor’s handling of customer calls.

13. Condor is a small company, but it has the resources and the will to be the best-in-class when it comes to consumer finance compliance.



Todd Baron

Sworn to before me this  
4 day of June, 2014

  
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Notary Public

PATRICIA A. YASPARRO  
Notary Public, State of New York  
No. 01YA5046870  
Qualified in Nassau County 2015  
Commission Expires 07/17/2015